IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

W.A.No.807 of 2002(A)

AGAINST THE JUDGEMENT IN O.P.NO.9312/1993 DATED 31/01/2002

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APPELLANT: PETITIONER:-

K. JAYAPRAKASH, T.C.29/151,
PULIMOOTTIL, THENGAPARA LANE,
PETTAH, TRIVANDRUM.

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENTS: RESPONDENTS:-

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1. INDIAN AIRLINES,
   REPRESENTED BY ITS REGIONAL DIRECTOR,
   AIRLINES HOUSE, MEENAMBAKKOM, MADRAS.

2. INDUSTRIAL TRIBUNAL, KOLLAM.

R1 BY ADV. SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 12/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

H.L.Dattu,C.J. & K.T.Sankaran,J.

W.A.No.807/2002-A

Dated, this the 12th day of July 2007

JUDGMENT

K.T.Sankaran,J.

The petitioner in O.P.No.9312 of 1993 challenges in this Writ Appeal the judgment of the learned Single Judge dated 31st January, 2002 dismissing the writ petition. The challenge in the writ petition was against Exhibit P1 award passed by the Industrial Tribunal, Kollam.

2. The writ petitioner, claiming to be a workman, raised an industrial dispute, which was referred for adjudication. The issue raised for adjudication was the following:

> "Whether the action on the part of the management of Indian Airlines in denying employment to Sri.K.Jayaprakash Casual Cleaner beyond 1.4.1989 is fair and justifiable? If not, to what relief the workman is entitled?".

3. The case of the writ petitioner is that he was appointed as a Casual Cleaner in the Ground Support Division of the management in Trivandrum Aerodrome on 12.10.1985. According to him, he continuously worked till 1.4.1989. He was being paid a sum of Rs.25/- per day as wages. On 1.4.1989, he met with an accident and he had to undergo treatment for one month. According to him, he applied for leave and produced a medical certificate. His case is that when he has reported for duty, he was denied employment.

4. The management denied the case of the writ petitioner. It was contended that the writ petitioner was not a casual employee nor a permanent employee. It was contended that the writ petitioner was not entitled to get any relief from the Industrial Tribunal.

5. The Industrial Tribunal, after considering the oral and documentary evidence in minute detail, held that there was no proper appointment of the writ petitioner as a Casual Cleaner. The Tribunal noticed that there is a method of appointment and a procedure to be followed by the management in the matter of appointment. There is no case for the writ petitioner that he was appointed following that procedure. It was held by the Tribunal that even if the writ petitioner worked for a few days as a result of backdoor entry as a Casual Cleaner, his claim cannot be entertained by the Tribunal. It was also noticed by the Tribunal that though the petitioner's case was that he met with an accident on 1.4.1989 and was under treatment for 31 days, the grievance raised by the writ petitioner before the management for the first time was only on 15.10.1989 stating that there was denial of employment. It was noticed that there was no satisfactory explanation for the delay in submitting the representation before the management. The Tribunal on evidence held that there was no denial of employment of the writ petitioner and he was not entitled to any relief as claimed by him.

6. The learned Single Judge considered the facts and circumstances of the case and also the arguments put forward for the writ petitioner and held that there was no error or illegality committed by the Tribunal in arriving at the conclusion that there was no denial of employment.

The learned Single Judge also noticed the decisions of the apex Court in *Uptron India Ltd.* v. *Shammi Bhan and another* [1998 (6) SCC 538] and *State of Haryana* v. *Om Prakash and another* [1998 (8) SCC 733] and a decision of this Court in *Peroorkada Service Co-operative Bank Ltd*. v. *S.Sheena & Others* [O.P.No.18949 of 1995] and held that a person employed on daily wages cannot claim the benefits under the Industrial Disputes Act. In *Koodaranji Service Co-operative Bank* v. *M.M.Lissy and others* [1993 (2) K.L.J. 652] it was held by a Division Bench of this Court as follows:-

> "Section 80 of the Co-operative Societies Act enjoins the Government to fix the number and designation of officers and Servants of the different classes of co-operative societies. In exercise of that power, Government framed Rule. Rule 188 of the Co-operative Societies Rules, dealing with staff pattern, mandates that every society shall adopt the staff pattern indicated in Appendix III to the Rules. As per that provision, where any society is in need of any change in the pattern of staff, society must get prior approval of the Registrar of Co-operative Societies for effecting the change. As per Appendix III attached to the Rules, no co-operative society is entitled to engage daily rated employees. In the instant case, the appointment of Smt.Lissy was against statutory rules. As a result of that engagement, there was no legal relationship of master and servant between the bank and Smt.Lissy. Consequent on the coercive action and orders passed by the authorities under the Co-operative Societies Act, Smt.Lissy could not be continued in the employment of the Bank. So, her services had to be terminated. It was in fact so terminated not as a result of any voluntary act of the bank. It was the result of the directives given by the authorities of the Co-operative Department, over which the bank had no control. The service of Smt.Lissy as Clerk on daily wages was not capable of being continued. Her services were terminated because she could not be continued in the same manner in which she was engaged earlier. It was as a result of such supervening impossibility the bank was compelled to terminate her services. Such termination of service cannot amount to retrenchment as defined in the Act".

In the facts and circumstances of the case and in the light of the law laid down by the apex Court and a Division Bench of this Court, we are of the view that the appellant is not entitled to succeed in the Writ Appeal. The judgment of the learned Single Judge does not call for any interference. The Writ Appeal lacks merits and it is, accordingly, dismissed.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vku/-